



1 4 JAN 2008

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In re Application of :
GE et al. :
U.S. Application No. 10/594,432 :
PCT No.: PCT/US05/10219 :
Int. Filing Date: 25 March 2005 :
Priority Date: 26 March 2004 :
Attorney Docket No.: 1034136-000035 :
For: PEGYLATION AND HYDROXYLATION :
OF TRIMETALLIC NITRIDE :
ENDOHEDRAL :
METALLOFULLERENES :

DECISION ON PETITION

This decision is issued in response to applicants' "Renewed Petition under 37 CFR 1.47(a)" filed 02 January 2008, to accept the application without the signature of joint-inventor, Harry C. Dorn.

BACKGROUND

On 25 March 2005, applicants filed international application PCT/US05/10219 which claimed a priority date of 26 March 2004. Pursuant to 37 CFR 1.495, the period for paying the basic national fee in the United States expired 30 months from the priority date, 26 September 2006.

On 26 September 2006, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an application data sheet; and a copy of the international application.

On 25 September 2007, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 16 November 2007, applicants filed a petition under 37 CFR 1.47(a). In a decision dated 11 December 2007, applicants' petition under 37 CFR 1.47(a) was dismissed without prejudice.

On 02 January 2008, applicants filed the present petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor.

Applicants here have submitted the appropriate petition fee. Item (1) is therefore satisfied.

Regarding item (2), the petition asserts that the nonsigning inventor has refused to execute the declaration. Before a refusal to execute the application can be claimed, section 409.03(d) of the MPEP requires that the nonsigning inventor be provided with a copy of the complete application, including specification, drawings and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made."

Here, the evidence submitted to demonstrate Harry C. Dorn's refusal to execute the application papers is contained in the "Statement(s) of Facts" by Aaron S. Hullman included in the petition, and the exhibits thereto. These materials provide the required firsthand statement regarding the delivery to the nonsigning inventor of a copy of the complete application, and the nonsigning inventor's refusal to execute the application, with documentary evidence supporting the statement. Item (2) is therefore satisfied.

Regarding item (3), applicants have provided the last known address of the nonsigning inventor. Accordingly, item (3) is therefore satisfied.

Regarding item (4), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed declarations executed by two of the three inventors and including an unsigned signature box identifying the nonsigning inventor (Harry C. Dorn). This declaration is treated as having been executed by the available inventors on their behalf and on behalf of the nonsigning inventor. Item (4) is therefore satisfied.

For the reasons stated above, it is appropriate to accept the application without the signature of Harry C. Dorn under 37 CFR 1.47(a) at this time.

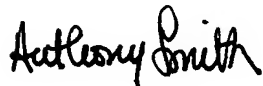
CONCLUSION

The petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(c), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(c) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.



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